

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DESIGN BASICS LLC,

Plaintiff,

v.

Case No. 13-C-560

CAMPBELLSWELL BUILDING SUPPLY, INC., et al.,

Defendants.

ORDER REGARDING SPOILATION

This case is scheduled for a jury trial beginning August 1, with a final pretrial conference scheduled for July 18. The case was very recently reassigned to this court. My review of the recent filings, including proposed jury instructions and verdicts, suggests that one issue is worth exploring before the parties proceed to trial. Clarifying the status of the action, and what questions are properly posed to the jury, may assist the parties in preparing for trial and possibly in settling the case.

The Defendants moved for summary judgment on the basis of spoliation, arguing that the Plaintiffs had failed to preserve evidence that would allow the Defendants to show that the otherwise protectable parts of the Plaintiff's asserted plans were copied, rather than original. Judge Randa's June 6 decision denied the motion, concluding that a reasonable jury could agree with the Plaintiff's version of events. The proposed jury instructions and verdicts indicate that the parties envision bringing the matter of spoliation before the jury.

However, as that same June 6 ruling recognized, validity in this circuit is a question of law

for the court to decide. *Schrock v. Learning Curve Intern, Inc.*, 586 F.3d 513, 517 (7th Cir. 2009). The spoliation issue appears to speak solely to copyright validity, and thus spoliation arguments should be directed to the court rather than a jury. The court has not yet decided the spoliation question, concluding that it was not resolvable at summary judgment. The parties are therefore directed to prepare to discuss, at the final pretrial conference, ways of proceeding from here, including whether an evidentiary hearing should be scheduled in lieu of the trial, which would allow the court to rule on validity prior to bringing the case before the jury.

Dated this 13th day of July, 2016.

/s William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court